

Amended Minutes of the September 22, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Vinton E. Cassidy; Hon. Michael P. Friedman; Hon. Andrew Ketterer; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:10 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of minutes of the August 23, 2006 meeting

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (5-0) to adopt the minutes as printed.

Agenda Item #2 – Request for Matching Funds Because of RGA Advertisements

The LaMarche for Governor campaign requested matching funds based on two television advertisements mentioning Chandler Woodcock sponsored by the Republican Governors Association ("RGA"). The LaMarche campaign argued that the advertisements were express advocacy in support of Mr. Woodcock, and were coordinated with the Woodcock campaign. The RGA and the Woodcock campaign argued that the advertisements did not contain any express advocacy and that there was no coordination with the Woodcock campaign. The Commission also considered an advertisement paid for by the Maine Democratic Party which the RGA contended should be found to be express advocacy in support of Governor Baldacci if the Commission determined that the RGA's advertisement contained express advocacy.

Mr. Ketterer made a motion to deny the LaMarche campaign's request for matching funds based on the RGA ad and to make a factual finding that none of the ads as were seen by the Commission during the meeting constituted express advocacy or were coordinated with the campaigns. Mr. Cassidy seconded the motion. The motion was approved by a vote of four in favor and one opposed. Ms. Ginn Marvin, Ms. Thompson, Mr. Ketterer, and Mr. Cassidy voted in favor of the motion. Mr. Friedman voted in opposition.

[A transcript of this item has been made available to the Commission members for their review. The transcript is available to the public on the Commission's website or upon request.]

Agenda Item #3 – Complaint regarding House Democratic Campaign Committee Flyer for Charlie Priest

Mr. Wayne said that Amy McKenna, Republican candidate for House of Representatives in the Brunswick area, filed a request for an inquiry into whether she deserved matching funds from a flyer distributed by the House Democrats on behalf of her opponent, Charlie Priest. Mr. Wayne said that the flyer contained express advocacy. Mr. Wayne said that the “paid for” disclosure statement on the flyer did not comply with the statute. Mr. Wayne said that the statement should have included language that the flyer was not authorized by any candidate. Mr. Wayne said that the staff recommended a finding of violation, but no penalty since the disclosure statement was corrected within 10 days.

Amy McKenna said that she was a Clean Election candidate for House District 63 in Brunswick. Ms. McKenna said that she was concerned about the lack of proper disclosure on the materials distributed by the House Democratic Campaign Committee (HDCC). Ms. McKenna said that the Commission staff recommended no penalty since the HDCC spent only a small amount of money on the flyers. Ms. McKenna said that the amount of the expense reported by the HDCC should have been \$130 rather than \$8, since staff was paid to distribute the literature.

Mr. Wayne said that the difference in the expenditure amount did alter the staff's recommendation.

Ms. McKenna said that if she had not brought the complaint, the HDCC would not have disclosed the full amount of the expenditure. Ms. McKenna said that the flyers were distributed to about 1,000 homes, or 40% of the district, over 3 days. Ms. McKenna said that the staff recommendation of no penalty was not sufficient since the \$130 amount was above the \$100 reporting threshold. Ms. McKenna questioned whether the flyer was actually distributed without the knowledge of Mr. Priest. Ms. McKenna said that John Richardson, who is the current incumbent in House district 63, is the primary fundraiser for the HDCC. Ms. McKenna said that there was a conflict when a PAC expended funds in a district where its primary fundraiser resides. Ms. McKenna said that the HDCC had \$75,000 in available resources, resulting in an unlevel playing field between candidates in her district. Ms. McKenna suggested that PACs should be required to receive authorization for expenditures from Clean Election candidates, with the amount of money spent being subtracted from the money received in Clean Election funds by the candidate being supported.

Mr. Ketterer asked Ms. McKenna what she would recommend as a resolution to her complaint. Ms. McKenna replied that she would like to receive at least the amount of money that was spent by the HDCC on behalf of Mr. Priest.

Mr. Wayne said that he requested information from the HDCC about how much was spent delivering the literature. Mr. Wayne said that he received the information from Paul Brunetti the previous day. Mr. Wayne said that Mr. Brunetti told him that the paid staff was going door-to-

door for purposes other than just delivering flyers. Mr. Wayne said that the total of the staff expense plus materials was \$130. Mr. Wayne said that the staff recommendation was that the HDCC should be required to file an independent expenditure report by the next deadline and that Ms. McKenna should be paid \$130 in matching funds minus any funds left over from the primary election.

Ms. Ginn Marvin asked if Ms. McKenna was satisfied with this outcome. Ms. McKenna replied that she was only seeking fairness.

Ms. Thompson asked if the staff recommended no penalty. Mr. Wayne said that there was no penalty in the statute if an improper disclosure statement was fixed within 10 days. Ms. McKenna asked if there was a penalty for not reporting the full amount. Mr. Wayne said that the HDCC was not yet late in reporting the expenditure. Mr. Wayne said that if the total expenditure on behalf of a candidate was over \$250, then the report would have to be filed within 24 hours.

Paul Brunetti introduced himself as caucus director of the Maine House Democratic Caucus. Mr. Brunetti said that the disclosure problem was fixed immediately upon notification from the Commission. Mr. Brunetti said that in response to the initial inquiry, a cost of \$8 for the flyers was calculated based on in-house production, which fell under the \$100 reporting requirement. Mr. Brunetti said that Mr. Wayne asked him about workers canvassing in support candidates and issue questions. Mr. Brunetti said that the HDCC provided the workers with literature to distribute as part of the canvassing and voter ID activities. Mr. Brunetti said that the \$130 amount was based on 1/5 of the workers' activities. Mr. Brunetti said that the HDCC did not yet file an initial report on the distribution of the literature, but intended to file any necessary report by the deadline.

Mr. Ketterer asked what else the canvassers were doing. Mr. Brunetti said that the canvassers were carrying literature, asking a question about what the individual considered to be important issues and asking questions about who the individual supported for state representative, state senator, and governor. Mr. Brunetti said that distributing flyers was a small percentage of the canvassers' activities, which were primarily establishing voter IDs. Mr. Brunetti said that the HDCC flyers were the only literature they were carrying.

Mr. Friedman asked if three out of the four question topics were directed in support of Mr. Priest. Mr. Brunetti said that this was not necessarily the case, since the issue question did not involve Mr. Priest. Mr. Friedman asked if the issues were state or local. Mr. Brunetti said that it was a broad question that could trigger other questions based on specific responses.

Ms. Ginn Marvin said that it appeared misleading that the HDCC would report that the flyers were printed in-house with volunteer labor when in fact paid staff delivered the flyers. Mr. Brunetti said that the Democratic Party preferred to print flyers with volunteer labor and placed a statement referring to this on the flyer. Mr. Brunetti said that they would not include the statement on future literature if the Commission members thought it was misleading.

Ms. Ginn Marvin said that three out of the five questions asked by the canvassers directly related to House candidate Mr. Priest. Ms. Ginn Marvin said that he received a letter on August 24 about the disclosure statement. Ms. Ginn Marvin said that it seems like the HDCC would never have disclosed the staff expense if not pressed for the information by Mr. Wayne. Mr. Brunetti said that the staff was working under the “slate card” exemption since the voter ID activities applied to three or more candidates. Ms. Ginn Marvin asked if distributing flyers constituted voter ID. Mr. Brunetti said that the questions asked by the canvassers were voter ID. Mr. Brunetti said that if the workers were going door-to-door only delivering literature for one candidate, it would have been reported as an independent expenditure. Ms. Ginn Marvin said that the HDCC was being misleading. Mr. Brunetti said that the HDCC intended to work within the law.

Mr. Wayne asked if Mr. Priest knew about the flyers. Mr. Brunetti said that he did not. Mr. Brunetti said that Mr. Priest called him after the fact to ask about the flyers.

Ms. Ginn Marvin asked if it was common practice for the HDCC to distribute literature on behalf of a candidate without the candidate's knowledge. Mr. Brunetti replied that it was.

Mr. Friedman moved, and Mr. Ketterer seconded, that the Commission find that the value of the material and services rendered was \$390.

Mr. Wayne said that if the Commission agreed on that amount, he recommended that the Commission require the HDCC to file an independent expenditure report, it should have been filed within 24 hours. Mr. Wayne said that the Commission staff would then calculate matching funds based on the \$390 expenditure. Mr. Wayne said that the Commission should consider how much time was spent distributing the flyer by the canvassers. Mr. Wayne said that although some of the questions they asked may have benefited Mr. Priest, they were not part of the expenditure for distributing the flyers.

Ms. Thompson asked if Mr. Wayne's recommendation was based on the Commission's rules. Mr. Wayne said that going door-to-door to identify people as supporters of Mr. Priest may not amount to a communication covered by the independent expenditure reporting requirements.

Ms. Gardiner said that the questions from the workers seemed to be asking who the individuals would support, not whether they would support Mr. Priest.

Mr. Cassidy said that it seemed like the entire amount paid to the workers would be considered the cost of distributing the flyers. Mr. Wayne said that the questions asked by the workers had value to the party, but not to Mr. Priest.

Ms. Thompson asked for a staff explanation of the definition of independent expenditure and the updated staff recommendation.

Mr. Wayne said that the staff recommended a finding that 20% of the workers' cost went toward distributing the flyers. Mr. Wayne said that the time spent asking the four questions did not seem to be part of a communication expressly advocating the election or defeat of a candidate.

Mr. Friedman said that the flyer was for one candidate only and was designed to initiate inquiry into that candidate.

Mr. Brunetti said that the flyer was given out after the voter ID questions were asked. Mr. Brunetti said that the flyer was left in the doors of people who were not home. Ms. Ginn Marvin said that in those cases, 100% of the worker's time was spent distributing the flyer.

Ms. Thompson asked how the Commission dealt with similar issues in the past. Ms. Gardiner said that she did not recall any case involving the allocation of an independent expenditure from among various door-to-door activities.

Ms. Thompson asked if verbal surveys could be considered independent expenditures. Ms. Gardiner said that it would not be an independent expenditure unless it was express advocacy.

Mr. Cassidy said that the issue was whether the workers were being paid to ask the survey questions. Mr. Friedman said that paying workers to ask general questions did not count as an independent expenditure, but in this instance it was express advocacy for Mr. Priest.

Mr. Ketterer said that he felt influenced by the improper and misleading statements on the flyer. Mr. Ketterer said that the sense of fairness in the race was muddled by these issues.

Ms. Ginn Marvin said that Mr. Brunetti was experienced and understood the process of reporting. Ms. Ginn Marvin said that there was a lack of apparent attention to detail.

The Commission voted unanimously (5-0) to find that the value of the material and services rendered was \$390.

Agenda Item #4 – Complaint regarding Maine Democratic Party Mailing for Rep. Janet Mills

Mr. Wayne said that John Frary, chair of the Franklin County Republican Party, raised a complaint relating to a mailer containing contact information on Rep. Janet Mills and an invitation to a community forum where Rep. Mills would be present. Mr. Wayne said that the mailings contained no express advocacy. Mr. Wayne said that Mr. Frary requested a determination on whether the Republican candidate running against Rep. Mills was entitled to matching funds as a result of the mailings. Mr. Frary said that Rep. Mills denied having any knowledge of the mailings before they were distributed. Mr. Frary disputed Mr. Mahoney's letter in which he stated that there was no political implication in the mailings. Mr. Frary said that the invitations were only sent within Rep. Mills' district. Mr. Frary said that Rep. Mills benefited from name recognition as a result of the mailings.

Mike Mahoney said that he was present on behalf of the Democratic Party and available to answer any questions.

Steven Scharf introduced himself as a resident of Portland. Mr. Scharf said that he questioned whether the party operated independently from Rep. Mills in sending out the mailings.

Mr. Mahoney said that the community forum was set up by the attorney general and Rep. Mills. Mr. Mahoney said that the forum was not put on by the Democratic Party, but the party distributed the mailing to advertise the event. Mr. Mahoney said that the mailing did not require communication with Rep. Mills.

Mr. Ketterer asked if any money was collected at the community forum. Mr. Mahoney said that he was not aware of any fundraising at the event. Mr. Mahoney said that it was a constituent service on an issue of public concern.

Ms. Ginn Marvin asked what rules govern mailings of the type sent by the Democratic Party. Mr. Wayne said that since the mailings were sent more than 21 days before the election, they would have to contain express advocacy, which they did not, to be considered independent expenditures. Mr. Wayne said that if they had been sent with the cooperation of Rep. Mills, the Commission could debate whether they should be considered as contributions to her campaign.

Ms. Ginn Marvin said that it was difficult for her to believe that Rep. Mills was not involved in the invitation to the community forum. Mr. Wayne said that Rep. Mills' letter indicated that she had no knowledge or did not cooperate with the Democratic Party with regards to the mailing. Mr. Wayne said that the letter should be given the same credibility as Senator Woodcock's claim that he had no involvement with the Republican Governors Association ads. Mr. Friedman said that it was a good policy to believe such statements if there is no contradictory evidence.

Mr. Ketterer moved, Mr. Friedman seconded, and the Commission voted unanimously (5-0) to adopt the staff recommendation and take no action.

Agenda Item #5 – Complaint regarding Expenditures by Senate Candidate David Babin

Mr. Wayne said that the Commission staff received a complaint from William Dobrowolski about advertising he saw in a community newspaper, the *West End News*, that was run by state senate candidate David Babin. Mr. Wayne said that the content of the ad related to the Taxpayer Bill of Rights. Mr. Wayne said that Mr. Dobrowolski argued that the ads were in support of TABOR rather than campaign-related ads in support of the candidate and that the ads were an improper use of Maine Clean Election Act (MCEA) funds. Mr. Wayne said that Mr. Babin responded that the ads were a legitimate use of MCEA funds.

David Babin introduced himself as the Republican candidate for state senate district 8. Mr. Babin said that all of his ads include his picture and campaign logo. Mr. Babin said that he was a strong supporter of TABOR, with this position distinguishing him from the opposing candidates. Mr. Babin said that he was known in the Portland area for being an advocate of TABOR.

Dan Billings, who said that he was representing Mr. Babin, said that the Commission's guideline on ads was reasonable. Mr. Billings said that the Commission should not try to edit the content of ads or make determinations on which issues could be highlighted by Clean Election candidates. Mr. Billings said it would be a legitimate concern if someone was running for office solely to promote a referendum. Mr. Billings said that Mr. Babin's picture and logo were prominent in the ads. Mr. Billings said that Mr. Babin ran ads on other issues that followed a similar format. Mr. Billings said that it was not uncommon for candidates to attach themselves to prominent issues.

Steven Scharf said that he had done some work for the Babin campaign. Mr. Scharf said that he supported Mr. Babin's request that the complaint be dismissed. Mr. Scharf said that Mr. Babin had been known as a supporter of TABOR and assisted in gathering signatures for the initiative. Mr. Scharf said that Mr. Babin was in a three-way race for state senate, and the TABOR issue could have a large influence on the outcome of the election.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (5-0) to adopt the staff recommendation and take no further action.

The Commission decided to take up Item 7 out of order before returning to Item 6.

Agenda Item #7 – Request for Penalty Waiver/Lynda Quinn

Mr. Wayne said that Ms. Quinn was a write-in candidate during the primary election for Somerset County Commissioner. Mr. Wayne said that Ms. Quinn spent \$623 of her personal funds toward the primary election. Mr. Wayne said that since she was a candidate after the primary election, she should have filed campaign finance reports. Mr. Wayne said that she missed the July 25 deadline by 24 days. Mr. Wayne said that the formula in the statute resulted in a preliminary penalty amount of \$149.63. Mr. Wayne said that Ms. Quinn had no communication with the Commission office prior to the filing deadline, but she had some obligation to determine the reporting deadlines. Mr. Wayne said that the staff recommended a 50% reduction of the penalty amount.

Lynda Quinn said that she received wrong information from the party. Ms. Quinn said that she did not know she had to file finance reports until the Commission staff contacted her. Ms. Quinn said that she requested a waiver of whatever the Commission believed was fair and equitable. Ms. Quinn said that it was difficult for common people to run for office who were not aware of the rules and guidelines. Ms. Quinn said that she did not receive the necessary help from her party or from the state until she was contacted by the Commission staff. Ms. Quinn said that write-in candidates in particular could use additional guidance.

Mr. Ketterer asked if there was confusion on her certification by the Secretary of State. Ms. Quinn said there was no confusion, but when she provided the Secretary of State's office with the declaration of write-in candidacy the office's staff did not provide her with any additional information on being a candidate.

Mr. Friedman asked if she had run as a candidate previously. Ms. Quinn said that she ran as a Clean Election candidate three years before. Ms. Quinn said that she made a last-minute decision to run as a write-in candidate in the most recent primary election. Ms. Quinn said that she was familiar with filing reports when she ran previously. Ms. Quinn said that she thought that spending her own money on her campaign exempted her from filing reports.

Ms. Thompson asked where Ms. Quinn received the paperwork to run as a write-in candidate. Ms. Quinn said that the forms were provided by the Republican Party office in Skowhegan. Ms. Quinn said that nothing provided to her contained any information about filing finance reports.

Ms. Thompson asked how a similar situation could be prevented in the future. Ms. Gardiner said that the declaration of write-in candidacy is turned into the Secretary of State's office, so it may be possible to have greater coordination between that office and the Commission staff. Mr. Wayne said that the Commission staff could check with the Secretary of State's office to see who has filed the declaration, but it was ultimately the responsibility of the write-in candidate to seek information on reporting requirements.

Mr. Friedman asked Mr. Wayne about the basis for the staff's recommended reduction of the penalty amount. Mr. Wayne said that Ms. Quinn did not have the normal interaction with the Commission staff, as candidates who file the candidate registration form receive regular information and reminders.

Mr. Ketterer said that write-in candidates are not actually candidates until they are certified by the Secretary of State's office. Mr. Ketterer said that he agreed with the staff recommendation.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (5-0) to adopt the staff recommendation of a \$74.86 penalty.

Mr. Cassidy left the meeting.

Agenda Item #6 – Request for Advisory Opinion from Democratic and Republican Parties

Mr. Wayne said that the staff had a draft advisory opinion for the Commission's consideration in response to a request from Dan Riley, counsel to the State Republican Party, and Mike Mahoney, counsel to the State Democratic Party, on issues of concern to the parties.

Dan Riley said that there were unclear areas of the law relating to the Maine Clean Election Act. Mr. Riley said that he met with Commission staff and prepared the list of questions to be addressed in the advisory opinion. Mr. Riley said that the draft of the opinion was helpful and he did not have any additional comments or questions. Mr. Riley said that Mr. Mahoney shared his approval of the draft.

Ms. Gardiner asked if Mr. Riley was aware of any single-candidate PACs existing in the past. Mr. Riley said that he was only aware of the Maine for Mills PAC. Ms. Gardiner asked about the issue of whether a contribution to a single-candidate PAC was in effect a donation to that PAC's candidate. Mr. Riley said that he was involved in the issue as counsel to the Maine for Mills PAC, but the PAC had since disbanded.

Mr. Wayne said that under the election law, an employer providing the services of employees to a candidate would be considered a contribution to the candidate. Mr. Wayne said that there was an exception for political parties paying its employees for the purpose of providing advice to a candidate for no more than 20 hours. Mr. Wayne said that employee activities other than advice were not covered by the exception. Mr. Wayne said that in reality, the party employees' services to candidates go beyond just advising.

Mr. Riley said that the advisory opinion would allow for the parties to change their activities in order to conform to the existing law. Mr. Riley said that he would be willing to work with Mr. Mahoney to encourage the parties to advocate for changes in the election law if such changes

would be appropriate. Mr. Riley said that it was more difficult to comply as long as there were unclear areas in the law.

Mr. Wayne said that party employees assisting candidates should work separately from the employees involved in making independent expenditures in support of those candidates. Ms. Ginn Marvin said that it was good advice but expressed her concern that it was doubtful it could be complied with given the reality of how campaigns were run. Mr. Riley said that the advisory opinion could lead to changes in the ways in which campaigns are run.

Mr. Wayne said that he agreed with the interpretation of the law in the advisory opinion which states that a person can contribute to a PAC and specify that the contribution be used on a particular candidate's behalf without that contribution being considered a contribution to the candidate. That situation would not be "earmarking." Ms. Gardiner said that it was not considered to be a contribution to a candidate if a contributor to a PAC donated money to be spent on independent expenditures on behalf of that candidate. However, she pointed out that there may be some policy considerations resulting from the practice.

Mr. Riley said that there must be cooperation, consultation, or coordination with the candidate's campaign in order to fall under the definition of a contribution to the candidate.

Mr. Friedman asked if the Commission had the authority to provide advisory opinions. Mr. Riley responded that it was provided for under the Administrative Procedures Act. Mr. Riley said that it was not uncommon for the parties to ask state agencies for advisory opinions, but it was the first time he had requested one from the Commission. Mr. Riley said that it provided an opportunity for staff to clarify laws left unclear when passed by the legislature.

Alison Smith said that she was appearing on her own behalf. Ms. Smith said that she was involved with Maine Citizens for Clean Elections at the time that the act was being implemented and the question of the party's role in Clean Election campaigns was raised. Ms. Smith said that she was not aware that the 20 hour limit on advice from party employees applied to each employee individually. Ms. Gardiner said that the statute could be read either way.

Ms. Thompson asked if it would be possible to get a copy of the legislative testimony. Ms. Gardiner said that there would be a record from the committee, but there may not have been any floor debate.

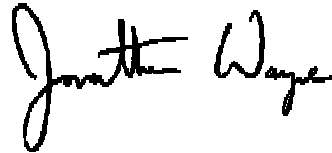
Ms. Smith said that the Commission should not allow for a loophole in which the party may provide an excessive amount of employee assistance to Clean Election campaigns. Mr. Riley said that the parties did not have enough employees available for that to be an issue.

Ms. Ginn Marvin asked that the Commission postpone discussing the remaining items on the agenda until its next meeting.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to approve the advisory opinion.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to table Items 8 and 9 until the next meeting and adjourn.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is written in a cursive, flowing style with a large initial "J" and "W".

Jonathan Wayne
Executive Director